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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

In re R.K. et al., Persons Coming Under
the Juvenile Court Law.

C062175

PLACER COUNTY DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

(Super. Ct. Nos.
53001313, 53001314,
53001315)

Plaintiff and Respondent,

v.

T.K.,

Defendant and Appellant.

Appellant T.K., mother of minors S., T., and R., appeals from the juvenile court's jurisdictional and dispositional orders. (Welf. & Inst. Code, §§ 360, subd. (d), 395.)¹ She claims she is entitled to have all of the findings and orders vacated because the juvenile court did not properly advise her of her rights or obtain an adequate waiver at the jurisdiction hearing. We affirm.

¹ All further statutory references are to the Welfare and Institutions Code.

BACKGROUND

We dispense with a recitation of the underlying facts and recite only those procedural facts that are necessary to the disposition of this appeal.

Placer County Department of Health and Human Services (DHHS) filed a section 300 petition on behalf of the three minors on January 14, 2004. The minors were each adjudged dependents of the court, placed with appellant, and provided services.² Following completion of services, dependency jurisdiction was terminated.

On October 1, 2008, DHHS filed a new section 300 petition on behalf of the three minors. A detention hearing took place on October 3, 2008. Prior to the detention hearing, appellant was appointed counsel and advised of her rights. She denied the allegations in the petition and a contested detention hearing was set. At the contested detention hearing on October 6, 2008, appellant submitted on the detention report with regard to one minor, but objected as to the other two minors. Following testimony by appellant, the minors' psychiatrist, and the social worker, the juvenile court found a prima facie case had been made indicating the minors fell within the provisions of section 300 and ordered the minors detained.

DHHS filed a lengthy jurisdiction report, including substantial documentary evidence, on December 2, 2008. After

² Appellant is the adoptive mother of the minors and their sole parent.

being reset several times, the "jurisdiction disposition hearing" was set for January 7, 2009. At the January 7, 2009, hearing, with appellant present, her counsel requested a contested hearing on both jurisdiction and disposition. When asked for a time estimate, counsel responded "[p]robably a significant trial" and estimated a full day. The contested hearing was set for January 30, 2009.

At the contested hearing, the court stated that there had been extensive discussion and that, with some modifications to the allegations of the petition, appellant would be "submitting and waiving cross-examination." Appellant's counsel agreed, and also agreed that the hearsay objections previously filed would be withdrawn without prejudice to renewal at the disposition hearing. The court found the allegations of the petition, as amended, proven by a preponderance of the evidence and set the matter for a contested disposition hearing.

Prior to the disposition hearing, appellant obtained new counsel. She then filed a motion to change the prior court orders pursuant to section 388, requesting reversal of the jurisdiction order and termination of jurisdiction because of alleged ineffective assistance by her prior counsel. She alleged prior counsel "did not present evidence or testimony proffered to him by [appellant]." The court denied the motion as untimely, or premature. Thereafter, appellant filed a declaration stating, *inter alia*, "I did not receive competent representation from the court appointed attorney and was thereby denied my right to call material witnesses, to present key

evidence, and to examine witnesses and challenge evidence provided by the county." In support of this contention, she alleged that her attorney did not contact, prepare, and call witnesses she had provided, and had only arranged for a single witness on her behalf.

At the commencement of the March 26, 2009, contested disposition hearing, appellant's counsel orally demurred to the petition. The court ruled the demurrer was not timely. The court then heard oral testimony from 19 witnesses and received 20 items into evidence during the course of the seven-day contested hearing.³ As part of his closing, appellant's counsel argued that even if the court would not revisit its prior ruling on jurisdiction, it should assure that jurisdiction was still justified. The court took the matter under submission and subsequently read a detailed ruling into the record. The ruling began as follows:

"First, it's the Court's jurisdictional finding all three children were taken on January 30th, 2009 after the matter was submitted to the Court's jurisdiction, and the Court made the appropriate findings. Specifically, the Court found that the children came under Welfare [and Institutions] Code [section] 300[, subdivisions] (c) and (i) for [S.], and [section] 300[, subdivision] (j) for [R.] and [T]. The language of the petition was modified after lengthy discussions in the

³ Commissioner John Ross presided over the jurisdiction hearing. Judge Colleen Nichols presided over the disposition hearing.

Court, according to the minutes. Specifically, mother submitted to the Court the allegations under [section] 300[, subdivision] (i), reading as follows: 'Mother has engaged in deliberate and [torturous] confinement of [S.] and other [torturous] acts and omissions reasonably understood to cause serious emotional damage.' There were also minor charges to the allegations under [section] 300[, subdivision] (c) upon -- to [S.], and [section] 300[, subdivision] (j), referring to [T. and R]. The Court finds the children are ordered dependents, and adjudged dependent children of the Court, are [S.] [section] 300[, subdivisions] (c) and (i), and [R.] and [T.] under [section] 300[, subdivision] (j).'' The court thereafter made findings and orders for removal and services.

DISCUSSION

Appellant contends her statutory rights were violated because the court did not provide her with a proper advisement of her rights and obtain a proper waiver of those rights, pursuant to California Rules of Court, rules 5.534 and 5.682, prior to the jurisdiction hearing.⁴ She argues that, accordingly, the jurisdiction and disposition findings must be vacated. We disagree.

Rule 5.534 provides that the court must advise a parent of the right to assert the privilege against self-incrimination, to confront and cross-examine persons who prepared reports and

⁴ All further references to rules are to the California Rules of Court.

witnesses called to testify, to use the court's subpoena powers, to present evidence, to receive the social worker's report and documents used in its preparation, and to receive documents filed with the court. (Rule 5.534(k).) Referring to jurisdiction hearings, rule 5.682 provides that, after giving the rule 5.534 advisements, the court must give the following advisements: "(1) The right to a hearing by the court on the issues raised by the petition; [¶] (2) The right to assert any privilege against self-incrimination; [¶] (3) The right to confront and to cross-examine all witnesses called to testify; [¶] (4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian; and [¶] (5) The right, if the child has been removed, to have the child returned to the parent or guardian within two working days after a finding by the court that the child does not come within the jurisdiction of the juvenile court under section 300, unless the parent or guardian and the child welfare agency agree that the child will be released on a later date." (Rule 5.682(b).) If a parent admits the allegations or submits on the petition, the court is to make certain findings, including that the parent voluntarily, knowingly, and intelligently waived his or her rights. (Rule 5.682(f)(3).)

Appellant now claims reversal is required because the juvenile court did not strictly adhere to these rules. Any shortcomings, however, were manifestly not prejudicial.

First, the court did expressly advise appellant of her rights at the detention hearing, prior to the jurisdiction

hearing. Specifically, the court advised her: "[A]s the children's mother you are entitled to certain constitutional rights at each stage of the juvenile court process. I want to review those rights with you at this time. [¶] First of all, Ms. [K.], you have the right to be represented by an attorney in this matter. If you cannot afford an attorney, we can appoint one this morning to assist you. [¶] Secondly, in addition to your right to counsel, Ms. [K.], you have the right to a contested hearing if you want one on the allegations set forth in this October 1st petition filed by the Department. It has been handed to you here this morning. [¶] If you want such a hearing, Ms. [K.], at that time you would have the right to see, hear, question, cross-examine any and all witnesses that county counsel, Mr. Coffman, may call to testify against you. At the time of such a hearing, you would have the right yourself to bring into court any witnesses or evidence that might be helpful to your case and to use the subpoena powers of the court to enforce that right at no cost to you. [¶] You would have the right to testify in your own defense. In the alternative you have the right not to testify and to remain silent and not incriminate yourself." The court then asked, "Do you understand all of those rights?" Appellant responded, "Yes, sir."

Thus, contrary to her current position, the court specifically informed her of her right to a hearing on the allegations of the petition. Moreover, the subsequent proceedings demonstrate that appellant understood those rights. She initially exercised her right to a contested hearing, which

was planned as a one-day "trial." She filed a declaration stating she had been requesting her attorney contact and call certain witnesses at that hearing. Her argument on appeal that she did not knowingly give up those rights when she submitted on the petition is specious. Any failure by the court to reiterate her rights or to obtain a personal and express waiver on the record of those rights is harmless under the circumstances.

In any event, appellant has essentially already received a contested jurisdictional hearing—the remedy she requests—thereby eliminating any possible prejudice. As set forth above, appellant's counsel requested the judge presiding over the disposition hearing reconsider jurisdiction. After the lengthy, 7-day contested hearing, during which the court heard from 19 witnesses and received 20 items of evidence, the court specifically affirmed the jurisdictional findings.

Thus, there is manifestly no prejudice from any failure by the court to have further advised appellant of her rights or obtain specific waivers. As such, her appeal fails. (See *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378-1379 [appellant must demonstrate prejudice from failure to receive admonitions].)

DISPOSITION

The judgment is affirmed.

_____, RAYE, J.

We concur:

_____, SIMS, Acting P. J.

_____, NICHOLSON, J.